

**BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM**

**PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER**

**Friday, the 28<sup>th</sup> day of November 2014**

**O.P.Nos.77/2013, 78/2013, 79/2013AND 80/2013**

**O.P.No.77/2013**

Petitioner : Anitha Suresh,  
W/o Suresh,  
Residing at Kannimolath House,  
Vengola P.O., Ernakulam District.  
Member, Ward No.22,  
Vengola Grama Panchayat

**(By Adv. S.Sreebhadran)**

Respondent : T.P.Alias,  
Rsiding at Thottathil House,  
Valayam Chirangara P.O.,  
Perumbavur, Ernakulam District.  
Member, Ward No.12,  
Vengola Grama Panchayat,

**(By Adv. Fathahudeen)**

**O.P.No.78/2013**

Petitioner : Anitha Suresh,  
W/o Suresh,  
Residing at Kannimolath House,  
Vengola P.O., Ernakulam District.  
Member, Ward No.22,  
Vengola Grama Panchayat

**(By Adv. S.Sreebhadran)**

Respondent : Shiny Shaji,  
Rsiding at Kallammakkudy,  
Allapra P.O.,Ernakuum District.  
Member, Ward No.11,  
Vengola Grama Panchayat,  
  
(By Adv. Fathahudeen)

**O.P.No.79/2013**

Petitioner : Anitha Suresh,  
W/o Suresh,  
Residing at Kannimolath House,  
Vengola P.O., Ernakulam District.  
Member, Ward No.22,  
Vengola Grama Panchayat  
  
(By Adv. S.Sreebhadran)

Respondent : K.E.Kunju Mohammed,  
Rsiding at Kannothu House,  
West Vengola P.O.,Ernakuum District.  
Member, Ward No.20,  
Vengola Grama Panchayat,  
  
(By Adv. Fathahudeen)

**O.P.No.80/2013**

Petitioner : Anitha Suresh,  
W/o Suresh,  
Residing at Kannimolath House,  
Vengola P.O., Ernakulam District.  
Member, Ward No.22,  
Vengola Grama Panchayat  
  
(By Adv. S.Sreebhadran)

Respondent : Sivan Kadali,  
Rsiding at Kadaliparambil Veedu,  
West Vengola P.O.,Ernakuum District.  
Member, Ward No.2,  
Vengola Grama Panchayat,

**(By Adv. G.S.Radhakrishnan)**

These petitions having come up for hearing on the 29<sup>th</sup> day of October 2014, in the presence of Adv. **S.Sreebhadran** for the petitioner and Advs. **Fathahudeen & G.S.Radhakrishnan** for the respondents and having stood over for consideration to this day, the Commission passed the following.

### **COMMON ORDER**

These are petitions filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Vengola Grama Panchayat. Since common questions of law and facts arise for consideration in all these cases, they have been taken up jointly as per order on I.A.No.3/2014 and O.P.No.77/2013 has been taken as the leading case.

2. The common allegations raised in the petitions are in brief, as follows:-  
The petitioner and respondents are elected as members of Vengola Grama Panchayat belonging to Congress party in the General Election held in 2010. The UDF consisting of Congress party and Indian Union Muslim League secured 16

seats out of 23 seats and the LDF secured 6 seats and one independent candidate also has won in the election. As per the decision of the UDF parliamentary party Sri.M.M.Avaran belonging to Congress party was elected as President and Smt.Rafia Ibrahim belonging to Indian Union Muslim League was elected as Vice President. Smt.Rafia Ibrahim resigned from the post of Vice President on 24.07.2013 and the election to that post was scheduled to be held on 19.08.2013. On receiving notice the UDF parliamentary party convened a meeting on 07.08.2013 at T.B.Perumbavoor. Except the three Muslim League members all others in the UDF attended the meeting and it was unanimously decided to elect Smt. Merly Roy as Vice President. The respondents also were present in that meeting. The decision was conveyed to the District Committee office of the Muslim League and Congress party. On 08.08.2013 all the members of the Congress party including these respondents went to the DCC office as instructed by the DCC President and all the Congress members received the whip from the DCC President. The respondent in O.P.No.77/2013 had received the whip and acknowledged on the overleaf regarding acceptance of the same. The respondents in O.P.Nos.78/2013 to 80/2013 refused sign on the back side of the original whip and the service of the whip to them were certified by the persons present in the DCC office. On the date of election the respondent in O.P.No.79/2013 proposed the name of the respondent in O.P.No.78/2013 and

with the support of the LDF members she contested against Smt.Merly Roy the official candidate of the Congress party and UDF. The UDF candidate Smt.Merly Roy secured 10 votes whereas the rebel candidate Smt.Shiny Shaji secured 11 votes which include 7 LDF votes and 4 UDF votes. The respondents in O.P.Nos.78/2013 and 79/2013 voted in favour of Smt.Shyni Shaji and the respondent in O.P.No.77/2013 made his vote invalid by not making any mark in the ballot paper and the respondent in O.P.No.80/2013 did not participate in the voting. On account of the conduct of the respondents, the official candidate of Congress party was defeated. The acts of the respondents were in violation of the whip and totally against the direction and advice of the UDF coalition and the Congress party. Thus the respondents have given up their membership from the party and so they are liable to be disqualified for being members of this Panchayat. Hence these petitions.

3. The respondents have taken common contentions which are in short as follows,- The petitions are not maintainable either in law or on facts. The petitioner has no case that the political party or the UDF had decided to field Smt.Merly Roy as its official candidate to the post of Vice President or that the respondents had voluntarily abandoned their membership of the political party and joined in any other political party or coalition. The case of the petitioner is that some UDF members decided to field Smt.Merly Joy as Vice President

candidate and the said decision was conveyed to the District committee of the Muslim League and Congress party. So the decision according to the petitioner was not taken by any political party or by the coalition but only some of the elected Congress members. The allegation in the petition is that the respondents who are Congress members have supported the nomination of another Congress member to the post of Vice president. Supporting the nomination of a Congress member will not amount to defection. The petitioner has no case that the Congress party had decided to field Smt.Merly Roy as official candidate. Any individual decision of the DCC President without the decision of the political party cannot be termed as the decision of that political party. The petitioner also has no case that copy of the alleged whip was given to the Secretary of the Panchayat. So the petition itself is not maintainable. The allegation that the respondents took a stand different from their political party is totally false. No meeting was convened on 07.08.2013 at Town Hall or T.B as alleged. There is no T.B in Perumbavoor. The Vengola Mandalam Congress Committee President had published a notice dated 26.08.2013 with a copy of the alleged whip wherein the date of whip is shown as 18.08.2013 whereas the allegation in the petition is that the whip was issued on 08.08.2013. There was no need or occasion for the petitioner to go to the DCC office on 08.08.2013 for receiving a whip dated 18.08.2013 as seen from the notice published by the Mandalam Congress

Committee President. The respondents have not received any whip at the DCC office. Neither they had gone to the said office as alleged. The petitioner may have created false documents to suit her case. It is true that the respondent in O.P.No.77/2013 had nominated Smt.Shyni Shaji as a candidate for the post of Vice President. The decision to field Smt.Shyni Shaji was taken by the UDF and her nomination was proposed by Congress a member and supported by a member belonging to Muslim league. Though all UDF members were directed to vote in favour of Smt.Shyni Shaji, a rebel group was formed among the Congress members as part of group politics and at their instance Smt.Merly Roy contested as a rebel candidate. It is the petitioner and certain others who committed defection. Due to old age ailments the respondent in O.P.77/2013 forgot to make the voting mark in the ballot paper and his vote was declared as invalid. No case has been filed against the Indian Union Muslim League members for giving support to Smt.Shyni Shaji. The respondents have not committed any defection and the petitions deserves only dismissal.

4. Upon the above pleadings the following issues are settled for trial;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act?
- (iii) Reliefs and costs?

5. The evidence consists of the oral depositions of PWs1 to 6, RWs1 and 2 and Exts.P1 to P13, R1 to R6 and X1.

6. Both sides were heard

7. **ISSUE No.(i)**: The petitions are filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act' alleging that the respondents have acted against the decision of the parliamentary party and the direction of the DCC President in respect of voting in the election to the post of Vice President held on 19.08.2013 and thereby they committed defection. The respondent would deny such allegations. Section 4(1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision. Admittedly the parties were elected as members belonging to Congress party. So Section 3(1)(a) of the Act applies. Section 3(1)(a) states that if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if he violates the direction in writing issued by the political party or by a person or authority authorized by it in this behalf, in an election to



the post of President, Vice President, Standing Committee Chairman or members or on a no confidence motion moved against any one of them except a Standing Committee member, he shall be disqualified for being a member of that local authority. The petitions are filed by a member of the same Grama Panchayat of which the respondents also are members. So the petitioner is competent to file the petition as provided by Section 4(1) of the Act and Rule 4A(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. No doubt in the present set of facts a question arises as to whether the respondents are disqualified on account of the alleged defection for being members of the Panchayat. The petitions are filed within the period prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. Apart from raising a vague contention that the petitions are not maintainable no tenable grounds are stated to support such a contention. On a careful appreciation of all facts I find that the petitions are maintainable. The issue is answered accordingly.

8. **ISSUE Nos.(ii) and (iii)**: The common petitioner and all the respondents were admittedly elected as members belongs to Congress party in the General Election held in 2010. Exts.P4 to P7 would further vindicate this fact. Out of the total 23 seats, the UDF secured 16 seats and Sri.M.M.Avaran belonging to Congress party was elected as President and Smt.Rafiya Ibrahim

belonging to Muslim League was elected as Vice President. She resigned on 24.07.2013 and the election to the post of Vice President was scheduled to be held on 19.08.2013. Ext.P8 is the letter given by the Commission fixing the above date and Ext.P9 is the notice given by the Returning Officer to the members regarding the election to the post of Vice President at 11am on 19.08.2013. According to the petitioner on receiving the notice the UDF parliamentary party was convened on 07.08.2013 at T.B, Perumbavur and except the three Muslim League members all others attended and it was decided in the meeting to elect Smt.Merly Roy as Vice President and this decision was communicated to the District Congress Committee President and the DCC President informed the members to receive the whip on 08.08.2013 by coming to his office. The petitioner as PW1 has deposed that all the members belonging to UDF except the three Muslim League members had attended the UDF parliamentary party meeting at T.B on 07.08.2013 and the KPCC representative Sri.T.P.Hassan also had attended that meeting and it was decided in the meeting to elect Smt.Merly Roy as Vice President and the decision was communicated to the DCC President. Ext.P10 is stated to be the minutes of the said meeting. Sri.T.P.Hassan has been examined as PW5 and he has deposed that he had attended the meeting held at T.B on 07.08.2013 and all the 13 Congress members were present in that meeting and it was unanimously decided to elect Smt.Merly

Roy as Vice President and the decision was communicated to the DCC President as well as the Muslim League leadership. Ext.P10(a) is stated to be the minutes of that meeting.

9. The respondents would deny the meeting said to have been convened on 07.08.2013. The respondent in O.P No.79/2013 has deposed as RW1 that no such meeting was convened at T.B on 07.08.2013 and there is not even a T.B in Perumbavur and the signatures appearing in Ext.P10(a) are stated as fabricated. However the respondent in O.P.No.80/2013 has deposed that he had participated in the meeting held at T.B on 07.08.2013 and that the said meeting was convened for deciding the candidate for the post of Vice President and he further states that Sri.T.P.Hassan also was present in that meeting and that he had put his signature in the attendance portion of Ext.P10(a) and identified his signature in that record. But according to him no decision was taken to elect Smt.Merly Roy as Vice President in that meeting. So the denial of convening of such a meeting on the part of the respondents cannot stand to legal scrutiny. The respondents have produced Exts.R2 and R3 to make it appear that no such meeting was convened as alleged by the petitioner. However in the light of the admitted evidence given by the respondent in O.P.No.80/2013 as RW2 it is found that the UDF parliamentary party meeting was convened at T.B in which the respondents also participated. But none of the respondents or others who had participated in that

meeting have not affixed their signatures under the decision said to have been taken in that meeting. Only the parliamentary party leader has put his signature below the said decision. Moreover the Muslim League members did not participate in that meeting. It is also found that there is correction to the date of convening that meeting. There is force in the contention of the respondent that originally the date was 17.08.2013 and the date 17.08.2013 appears to have been changed as 07.08.2013 by altering the digit one as zero. As rightly pointed out by the learned counsel for the respondent that if the digit 7 was prefixed by zero then the month 8 also should have been preceded by zero. More over whether the UDF parliamentary party is a competent body to decide the Congress party candidate for the post of Vice President also deserves consideration. **Section 3(1)(a) of the Act** assumes relevance and it reads as follows,-

*“3.(1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.*

*(a) “if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a*

*person or authority authorized by it in this behalf in the manner prescribed, votes or abstains from voting.*

*(i) in a meeting of Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing committee or the Chairman of a standing committee; or*

*(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or in an voting on a no-confidence motion against any one of them except a member of a Standing Committee.*

*he shall be disqualified for being a member of that local authority.”*

10. So from the above provision it is clear that a member of a political party is bound by the decision and direction of his party alone. The coalition in which a party is a constituent is not competent to take any binding decision regarding a member belonging to political party. Even if a coalition is consisting of various political parties, such a coalition cannot have any relevance in respect of the conduct of a member belonging to a political party in that coalition.

11. According to the petitioner the decision of the UDF parliamentary party was conveyed to the DCC President who in turn directed all the Congress members to come to the DCC office on 08.08.2013 and to receive his whip and

accordingly all the Congress members went to his office and received the whip and except the respondents in O.P Nos.78/2013 to 80/2013 all others accepted the whip and made endorsement on the overleaf of the original whip as token up their acceptance. Ext.P11 is stated to be the whip issued by the DCC President which was accepted by the Congress members. PW1 has deposed that the respondents in O.P.Nos.78/2013 to 80/2013 had, after receiving the whip, refused to give acknowledgment and that the service of whip to them were attested by PWs 2 to 4. PW2 has deposed that the whip of DCC President was served to the respondent in O.P.No.78/2013 in his presence and he had certified the same on the overleaf of Ext.P11. PW3 has deposed that the respondent in O.P. No.79/2013 had received the whip in his presence and he had certified service of the whip to that respondent on the overleaf of Ext.P11. PW4 has deposed that the whip to the respondent in O.P.No.80/2013 was served in his presence and that he had certified the same on the overleaf of Ext.P11. Admittedly the respondents in O.P.Nos.78/2013 to 80/2013 have not acknowledged receipt of any whip and there is nothing on record to prove that the whip of the DCC President was served to them. Sub rule (2) of Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules is relevant in this context and it reads as follows,-

*“While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses.[Copy of the direction in writing shall also be given to the Secretary.]”*

12. It is clear that the direction in writing said to have been issued by the DCC President was not served to the respondents in O.P.Nos.78/2013 to 80/2013 in any of the manner prescribed under sub-rule (2) of Rule 4 of the above Rules. Only in respect of the respondent in O.P.No.77/2013 at least a signature is appearing on the backside of Ext.P11 against his name. But he would deny the above signature and according to him he had not come to the DCC office or put his signature in Ext.P11. In this context it is important to notice that the DCC President has not been examined to prove the issuance of the whip. In the light of the denial of the signature of the respondent in O.P.No.80/2013 appearing on the overleaf of Ext.P11, the DCC President alone is competent to speak regarding the issuance of the whip to him. No explanation is forthcoming for the non examination of the DCC President in

these cases. Considering all facts and materials on record I find that his non examination is fatal to these cases.

13. The definite case of the petitioner is that the UDF parliamentary party meeting held on 07.08.2013 at T.B had decided Smt.Merly Roy as the Vice President candidate and based on it the DCC President had issued whip to all the Congress Members and the respondents, in violation of the whip issued by the DCC President, did not vote in favour of Smt.Merly Roy and when two of them supported the respondent in O.P.No.78/2013 the other two members did not cast vote and thereby all the respondents committed defection. I have already found that the UDF parliamentary party was not competent to take a decision regarding the candidate of the Congress party for the post of Vice President. Admittedly the Congress party did not take any such decision. So there is no evidence to prove that Smt.Merly Roy was decided as the Vice President candidate by the District Congress Committee or the Congress party. Even according to the petitioner the whip issued by the DCC President was only on the basis of the decision of the UDF parliamentary party meeting. The non examination of the DCC President and the non service of the whip to the respondents in O.P.Nos.78/2013 to 80/2013 would substantially prove that no such whip was served to those respondents. Since the respondent in O.P.No.77/2013 had denied his signature appearing on the overleaf of Ext.P11



against his name, it was for the petitioner to prove the issuance of the whip to him and as the petitioner has failed to prove the same by examining the DCC President and since there is no acceptable evidence to prove that whip of the DCC President was served to the respondents, it cannot be held that the respondents have acted contrary to the direction issued by the DCC President or the Congress party in the election to the post of Vice President held on 19.08.2013. It is all the more important to point out that the copy of any such whip was not given to the Secretary of the Panchayat which is a legal mandate as provided by Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. There is no evidence to prove that copy of the whip was served to him. On the other hand Ext.R1 would show that copy of such a whip was not given to the Secretary of the Panchayat. On account of these reasons the prayer of the petitioner that the respondents have committed defection by violating the whip issued by the DCC President cannot legally sustain.

14. The petitioner would also allege that the respondents have voluntarily given up their membership from the Congress party by not complying with the direction issued by the DCC President in respect of voting in the election to the post of Vice President held on 19.08.2013. Even though it is alleged by the petitioner that the UDF has taken a unanimous decision to elect Smt.Merly Roy

as Vice President, in the election held on 19.08.2013, the Indian Union Muslim League members did not vote in favour of Smt.Merly Roy. These respondents are Congress members and they also did not vote in favour of Smt.Merly Roy. The name of respondent in O.P.No.78/2013 was proposed by the respondent in O.P.No.79/2013 and it was supported by an Indian Union Muslim League member, both belonging to UDF. It is true that the respondent in O.P.No.78/2013 became the Vice President with the support of LDF members also. But since there was some group faction and there was no decision by the party to elect Smt.Merly Roy as Vice President, it cannot be held that the support given to the respondent in O.P.No.78/2013 by the LDF members would constitute defection. The short question to be decided is whether the respondents had acted against the decision or direction of the Congress party and whether they have become disloyal to the party by their conduct. In the cases on hand the DCC President did not come forward to give evidence. Admittedly the Congress party did not take a decision regarding the candidate for the post of Vice President. I have already found that the petitioner has failed to prove that the respondents have violated any whip issued by the DCC President. Since the Congress party did not take a decision regarding the Vice President candidate and the service of whip has not been proved, I am of the view that the conduct of the respondents in having not voted in favour of

Smt.Merly Roy cannot constitute defection by voluntarily giving up membership from the party. Therefore I find that the petitioner has failed to prove both the limbs provided under Section 3(1)(a) of the Act and so the petitions deserves only dismissal. The points are answered accordingly.

In the result, the petitions are dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 28<sup>th</sup> day of November 2014

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

**Witnesses examined on the side of the petitioner**

- |     |   |  |
|-----|---|--|
| PW1 | : | Smt.Anitha Suresh, Kannimolath House, Vengola P.O., Perumbavur                       |
| PW2 | : | Smt.Presanna Radhakrishnan, Prasannalayam, Allapra P.O., Pin: 683 556.               |
| PW3 | : | Sri.V.M.Hamssa, Vellakkudi Veedu, Kandathara, Allapra P.O., Pin: 683 556.            |
| PW4 | : | Sri.Joji Jacob, Madassery Kallarackal, Perumani, Vengola P.O.                        |
| PW5 | : | Sri.T.P.Hassan, Thekkekudy House, Rayanpuram P.O.                                    |
| PW6 | : | Sri.B.Sivasankaran, Senior Superintendent, Sub District Education Office, Perumbavur |

**Witnesses examined on the side of the respondent**

- RW1 : Sri.Kunju Muhammed, Kannothe Veedu,  
Marottychuvadu, West Vengola P.O.
- RW2 : Sri.Sivan Kadali,Kadaliparambil Veedu, West Vengola  
P.O. Ernakulam District, Pin:683 556.

**Documents produced on the side of the petitioner**

- P1 : Certificate dated 29.08.2013 issued by the Secretary,  
Vengola Grama Panchayat
- P2 : True Copy of the Declaration in form No.2 filed by  
Smt.Anitha Suresh
- P3 : True Copy of the Declaration in form No.2 filed by  
Sri.T.P.Alias
- P4 : True Copy of the Declaration in form No.2 filed by  
Smt.Shiny Shaji
- P5 : True Copy of the Declaration in form No.2 filed by  
Sri.Sivan Kadali
- P6 : True copy of the register showing the politicalaffiliation  
of the members of Vengola Grama Panchayat
- P7 : True copy of the declaration form No.1 filed by  
Sri.K.E.Kunjumammed , Vengola Grama Panchayat
- P8 : Copy of the letter No.6356/B/2013/SEC dated  
31.07.2013 issued by the State Election Commission
- P9 : Copy of the Election Notice No.F/3513/2013 dated  
05.08.2013 issued by the Returning Officer
- P10 : Minutes book of Congress parliamentary  
party Vengola Grama Panchayat
- P10(a) : Minutes of the meeting of UDF Panchayat  
Committee held on 07.08.2013
- P10(b) : Page No.59 of Ext.P10
- P11 : Copy of the whip dated 08.08.2013 issued by  
Sri.V.J.Polose Ex.MLA, President, Ernakulam District  
Congress Committee

- P12 : Copy of the minutes of the meeting dated 19.08.2013, Vengola Grama Panchayat
- P13 : Notice Published by Vengola Mandalam Congress Committee dated 26.08.2013

**Documents produced on the side of the respondent**

- R1 : Copy of the letter No.A1-10315/2013 dated 19.11.2013 issued by the Secretary addressed to Sri.Sivan Kadali
- R2 : Copy of the letter No.P.B-4/2005 dated 18.03.2014 issued by the Assistant Engineer addressed to Smt.Shyni Shaji
- R3 : Copy of the letter No.PB-4/2005 dated 28.02.2014 issued by the Assistant Engineer addressed to K.E.Kunju Muhammed
- R4 : Notice Published by Vengola Mandalam Congress Committee dated 26.08.2013
- R5 : Letter No.A/4620/2013 dated 12.11.2013 issued by the Assistant Educational Officer addressed to Sri.Sivan Kadali
- R6 : Letter No.A1-10315/2013 dated 19.11.2013 issued by the Secretary, Vengola Grama Panchayat

**Documents produced on the side of the witness**

- X1 : Used ballot papers of the election to Vice President Vengola Grama Panchayat held on 19.08.2013

**K.SASIDHARAN NAIR,  
STATE ELECTION COMMISSIONER.**

